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## EXTRAORDINARY

### PART II—Section 3

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#### ELECTION COMMISSION, INDIA

#### NOTIFICATIONS

*New Delhi, the 11th May 1953*

**S. R. O. 925.**—WHEREAS the election of Shri Abani Kumar Mukerjee as a member of the Legislative Assembly of the State of Rajasthan from the Phagi constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Suwa Lal, son of Shri Har Lal Jat, Kapriwas Khurd, Tehsil Phulera, District Jaipur ;

AND WHEREAS the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission ;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### IN THE ELECTION TRIBUNAL, JAIPUR

*Suwa Lal—Petitioner*

*Versus*

*Abani Kumar Mukerjee.*

ELECTION PETITION NO. 10 OF 1952

#### PRESENT :

1. The Hon'ble Mr. Justice K. K. Sharma—Chairman.
2. Mr. A. N. Kaul—Member.
3. Mr. P. L. Shome—Member.

Mr. J. K. Gupta for the petitioner Suwa Lal.

Mr. Sharma, Ramesh Chandra for the respondent No. 1.

#### ORDER

*Dated the 25th April 1953*

This is a petition by Suwa Lal, a voter in Phagi constituency of the Rajasthan Legislative Assembly for a declaration that the election to the Rajasthan Legislative Assembly from Phagi Constituency at which Shri Abani Kumar Mukerjee, respondent No. 1 was the successful candidate be declared wholly void, and with a further prayer that the respondent No. 1 be unseated and re-election be ordered. Shrimati Chiranjeevi, Shri Bansi Lal Luhadia, and Shri Bala Bux Brahmin, who were duly nominated have also been made respondents Nos. 2, 3, and 4 respectively and Shri Akhay Ram, whose nomination paper was rejected, has been made respondent No. 5.

The petitioners' case is that the nomination paper of respondent No. 5 was rejected by the Returning Officer on the ground that he was a Patel of village Gadota and as such held an office of profit under the Rajasthan Government, whereas Akhay Ram was not, in fact, a Patel and consequently his nomination paper could not be rejected on this ground. It has also been alleged that this improper rejection of respondent No. 5's nomination paper has materially affected the result of the election.

Summons were issued to the respondents and all the respondents excepting Shrimati Chiranji Devi and Bala Bux were personally served. Substituted service was made on Shrimati Chiranji Devi as she could not be served in the ordinary way. Service on Bala Bux was made by affixation under Order 5, Rule 17 of the Civil Procedure Code. Of the respondents only Shri Abani Kumar, respondent No. 1, Shri Bala Bux, respondent No. 4, and Shri Akhay Ram, respondent No. 5, filed their written statements. Both the respondent No. 1 and respondent No. 5 say in their written statements that Akhay Ram, respondent No. 5, was in fact the Patel of Mouza Cadota and as such held an office of profit under the Government of Rajasthan, and his nomination paper was properly rejected. They also say that at any rate the rejection of the nomination paper of Shri Akhay Ram has not materially affected the result of the election. Bala Bux, in his written statement, supports the petitioners and says that the real candidate on behalf of Kisan Sabha was Akhay Ram and Shrimati Chiranji Devi was his covering candidate. He says that the result of the election has been materially affected by the improper rejection of the nomination paper of respondent No. 5. The respondent No. 3, Shri Bansi Lal Luhadia did not file any written statement but he participated at the trial in person and supported the petition.

The following issues were framed :—

(1) Whether the nomination paper of the respondent Akhay Ram was improperly rejected on the ground that he was a Patel of village Gadota and, therefore, held an office of profit under the Government ?

(2) Whether the result of the election was materially affected by the rejection of the nomination paper of Akhay Ram ?

(3) Whether Akhay Ram was only a covering candidate for Chiranji Devi, respondent No. 2 and if so what is its effect ?

**Issue No. 1.**—This is the crucial issue in the case because if it is decided that the nomination paper of the respondent Akhay Ram was not improperly rejected, other issues require no decision. In support of his case that Akhay Ram was not a Patel the petitioner got a register of Patels maintained in the Tehsil of Phulera produced. Village Gadota is now in Phulera Tehsil but sometime back in the days of erstwhile Jaipur State, it was in Mozamabad Tehsil. Copies of the two entries, Ex. P. 1 and P. 2 from the original were filed by Shri Sawai Singh, Tehsildar, Phulera, P. W. 2. Ex. P. 1 shows that at serial No. 63 Mahadeo s/o Sheo Narain by caste Jat is entered as one of the Patels of village Gadota. Ex. P. 2 shows that at No. 64 Mahadeo s/o Kalyan by caste Jat has been entered as another Patel of the same village in the register of Patels. Besides this the petitioner examined Shri Nola, P. W. 3, Shri Mahadeo s/o Kalyan Jat, P. W. 4, Shri Bhura, P. W. 5, Shri Roop Narain, P. W. 6, and his ownself as P. W. 7. All these witnesses have stated that there were two Patels in village Gadota one of them was Mahadeo s/o Sheo Narain and the another was Mahadeo s/o Kalyan. The evidence of Shri Nola shows that Mahadeo son of Sheo Narain was popularly known as Mahadeo Ranua and Mahadeo s/o Kalyan as Mahadeo Bhaker. Shri Nola, P. W. 3 stated in his cross examination that land revenue is paid to the person whom Patwari brings as a Patel and that Patwari remains present when the realization of land revenue is made and signs the receipt about the receipt of land revenue. Shri Mahadeo, P. W. 4, admitted in his cross examination that if a Patel signs any paper he signs it as a Patel but if any other person signs it he does not sign it as Patel. He also admitted that Chut Patalai is the sum which is paid to a Patel for his work as a Patel and during the last 5 or 7 years Akhay Ram and the witness alone had been getting Chut Patalai and had been signing the receipts. He also admitted that neither he nor any Government official ever raised any objection to Akhay Ram describing himself as Patel in the papers which he signed. P. W. 5, Bhura, admitted in his cross examination that during the last 4 or 5 years Akhay Ram had been realizing land revenue. Shri Roop Narain, P. W. 6 admitted in cross-examination that he made an application along with other villagers that he be appointed a Patel of village Gadota in place of Mahadeo s/o Sheo Narain, who had died. This application was made on 1st January 1953, during the pendency of the present petition. It is on the file Ex. R-3/13. This witness is trying to be appointed as a Patel of village Gadota and naturally he has got interest adverse to Akhay Ram, respondent No. 5 and it was against his interest to depose that Akhay Ram was one of the Patels of village Gadota. As regards the petitioner he is an interested witness and is not even a resident of village Gadota. He is a Congressman and the respondent Akhay Ram had once been a prominent Congressman in the Tehsil. Now Akhay Ram has joined Kisan Sabha and stood as a candidate on behalf of the said Sabha. There is, therefore, ground for resentment to the petitioner against Akhay Ram. His evidence cannot, therefore, be taken at its face value. Besides the petitioner's evidence there is the evidence produced by Shri Bansi Lal Luhadia, respondent No. 3. As a matter of fact he appears to be more interested in the setting aside of the election of respondent No. 1 than the petitioner himself because he had stood as one of the candidates from the Phagi constituency, but the respondent No. 1 was elected.

He himself raised the objection before the Returning Officer that Akhay Ram was a Patel and his nomination paper should, therefore, be rejected and it was at his instance that that paper was rejected. This is the entire evidence which has been produced in support of the petition, on this issue. On behalf of the respondent No. 1 a number of receipts Exs. R 1/1 to R 1/38 have been filed. They cover a period of about 9 years from the year 1944 to the year 1952. Radha Kishan Patwari R 1 W. 3., a witness for respondent No. 1, has stated that receipts Exs. R 1/23 to R 1/28 were filled by him and signed by Akhay Ram in his presence. In all these receipts the Patwari has described Akhay Ram as Patel and Akhay Ram has also signed as Patel. In the remaining receipts also Akhay Ram is described as Patel and has signed as Patel. All these receipts relate to the realisation of Government dues from tenants and show that Akhay Ram as Patel realised those dues. The respondent No. 1 also got produced Khasra Girdawari Exs. R 1/40, R 1/41, and R 1/43. They are for the years St. 2006, 2005, and 2007, respectively. In all those Khasras in column No. 4 of Patel. Akhay Ram s/o Mahadeo's name is entered on one half and the name of Mahadeo s/o Kalyan on the other half. Then there is Bahi Khata Jins, whose copy Ex. R 1/42 is on the record. This has also been signed by Akhay Ram as Patel and Mahadeo also. This is for the Samvat year 2007-2008. Mahadeo, who has signed this Khasra is the son of Kalyan, as appears from the evidence of Mahadeo himself. Bahi Khata Jins of St. 2002, 2005, 2004, and 2006, were also produced and all of them are similarly signed by Akhay Ram s/o Mahadeo and Mahadeo s/o Kalyan as Patels. Then there is a copy of Sisha for the year St. 2007-2008, Ex. R 1/42. This is also signed by Akhay Ram as Patel. There is an entry to the following effect under date 20th May, 1947, in the Sisha :—

“ तारीख २०. ५. ४७. ई० को आलान रकम का भरकर विधा और रकम गिन कर सम्भाल दी गई। रकम पटेल अखयराम ने गिन कर सम्भाली। ”

Thus there is a mass of documentary evidence to show that Akhay Ram has been realising Chut Patalai from the Tehsil, he has been realising Government dues from the tenants as Patel, he has been signing Sishas and Bahi Khata Jins as Patel and has been recognised by the Government Officials as Patel. Besides this there is the oral evidence of Akhay Ram himself as R. 1 W. 1 of his brother Hansraj R. 1 W. 2, and Shri Radha Kishan Patwari R. 1 W. 3. The petitioner's own witness, Mahadeo P. W. 4 admitted that Akhay Ram has been realising Chut Patalai along with his ownself and has been signing in token of the receipts. Thus there is overwhelming evidence to show that Akhay Ram has been doing all the work of Patel since the year 1944 and has been recognised by the Government Officials as Patel and has been signing official documents describing himself as Patel. Thus there cannot be the least doubt that for the last 8 or 9 years Akhay Ram has been acting as Patel and has been recognised as such by the Government Authorities. There is not an iota of evidence to show that Mahadeo s/o Sheo Narain ever worked as Patel during this period. Respondent No. 2, Shri Bansilal Luhadia, himself raised the objection before the Returning Officer that Akhay Ram was a Patel and his nomination paper should be rejected. He also filed certain receipts to show that Akhay Ram was a Patel. The petitioner and respondent No. 3 take their stand only upon the two entries, Exs. P. 1 and P. 2, in the Register of Patels. Of course, the name of Mahadeo s/o Sheo Narain, who was the father of Akhay Ram is given therein as one of two Patels, but it is not of much help to the petitioner because it is not denied that at sometime Mahadeo s/o Sheo Narain was a Patel in the village. This register has been kept since the year 1935 and Akhay Ram has been recognised and acting as Patel since the year 1944. It may be that the entry in the register was not corrected even when Mahadeo s/o Sheo Narain was no longer a Patel. Shri Sawai Singh, Tehsildar, Phulera, P. W. 2, stated in cross-examination that after serial No. 58 in the register there is no entry about checking or signatures of any checking officer. The entries about the Patels of Gadota are at Nos. 63 and 64. Thus it is in evidence that these entries were not checked. The mere fact, therefore, that in this register there is no entry that Mahadeo s/o Sheo Narain ceased to be a Patel or in his place some other person was appointed as a Patel is not proof positive of the fact that Akhay Ram is not the Patel of village Gadota. On the contrary, the fact that Akhay Ram has been acting as a Patel and has been recognised as a Patel by Government authorities for the last 8 or 9 years, raises a presumption that Akhay Ram was duly appointed as a Patel and u/s 91, Exception I, Evidence Act, it was not necessary that any written authority for his appointment should be proved. It was argued on behalf of the petitioners that if Akhay Ram was appointed a Patel in place of his father there ought to be some order in writing about that appointment and the failure of the respondent No. 1 to produce it showed that he was never appointed as a Patel. The file No. 124 of St. 2000, dated 24th February 1944, was summoned from the Tehsil Phulera. Its title is about the appointment of Patelan Mouza Gadota, Circle No. 1. It shows that a statement of Akhay Ram was recorded on 7th April 1944 in which he stated that he was working as a Patel in Gadota. There is a report by the Patwari dated 7th March 1946 to the effect that Akhay Ram s/o Mahadeo and Mahadeo s/o Kalyan were discharging the duties of Patelan in village Gadota. Of course, this file does not contain any order about the appointment of Akhay Ram as Patel but it appears from an endorsement dated 19th August 1947, that separate proceedings were pending in connection with the Patalai arrangements. Of course this file is not traceable but as has been said above, from the acting of Akhay Ram as a Patel and his recognition as such by the Government authorities, he may be safely deemed to be a Patel even without proof of written appointment. To our mind, there is no reason to hold that Akhay Ram was not a Patel at the time when he filed his nomination paper.

Everybody interested at that time also took him to be a Patel and the candidate most interested i.e Shri Bansi Lal Luhadia, himself, produced evidence to show that Akhay Ram was a Patel. Akhay Ram himself did not say before the Returning Officer that he was not a Patel but only said why he should be debarred from standing as a candidate while even Ministers also, who received salaries, were not debarred from standing. The Returning Officer, therefore, had no option but to reject the nomination paper of Akhay Ram. It has been conceded on behalf of the petitioners as well as respondent No. 3 that the office of a Patel is an office of profit under Rajasthan Government. His nomination paper was, therefore, not improperly rejected. The proceedings subsequent to the death of Mahadeo s/o Sheo Narain produced on behalf of respondent No. 3 are of no help because they started during the pendency of this petition and here too it has not yet been decided that Mahadeo s/o Sheo Narain was Patel until his death and that it was necessary to appoint any successor in his place. We have shrewd suspicions that these proceedings have probably been started simply to give a colour to this case. The issue is decided against the petitioner and in favour of the contesting respondent No. 1.

*Issues No. 2 and 3.*—In view of our decision on Issue No. 1, decision on these issues is not called for.

The result is that the petition is dismissed with costs to the contesting respondent No. 1 including Rs. 100/- as Counsel fee.

(Sd.) KUMAR K. SHARMA, *Chairman.*

(Sd.) PARESH LAL SHOME, *Member.*

(Sd.) ANAND NARAIN KAUL, *Member.*

[No. 19/279/52-Elec. III/6684.]

**S. R. O. 926.**—WHEREAS the election of Shri Jaswant Raj of Ladnun House, Bagar, Ward No. 3, Jodhpur, as a member of the House of the People from the Jodhpur Parliamentary constituency of that House, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Banraj of Ward No. 10, Jalap Mohalla, Jodhpur ;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission ;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJASTHAN, BIKANER

ELECTION PETITION NO. 332 OF 1952

PRESENT :

1. Shri M. P. Asthana—*Chairman.*
2. Shri M. C. Bhandari—*Member.*
3. Shri Goverdhanas T. Gajria—*Member.*

Banraj, S/o Naraindas of Jodhpur, Ward No. 10, Jalap Mohalla—*Petitioner.*

*Versus*

1. Shri Jaswant Raj, Ladun House, Bagar, Ward No. 3, Jodhpur.
2. Shri M. Y. Nurie, Kolaba, Bombay.
3. Shri Rattanlal, Phulla Road, Ward No. 6, Jodhpur.
4. Shri Halder Bux, Haider Building, Sojati Gate, Jodhpur, Gulabwara, Belanganj, Agra.
5. Shri Sita Ram, Jaipuria, Kanpur.
6. Shri Shree Dhar, Janveri Bazar, Ward No. 11, Jodhpur.
7. Shri Prabhulal Himmatsinghka, Calcutta.
8. Shri Mubarak Mazdoor, Allahabad.
9. Shri Guman Singh, Zalim Vilas Paota, Jodhpur.
10. Shri Aidan Singh, Pal House, Gulab Sagar, Jodhpur.
11. Shri Hakim Nisar Ahmed, Jalap Mohalla, Ward No. 10, Jodhpur—*Respondents.*

The petitioner through Shri Suraj Karan Acharya, Advocate.

The respondent No. 1 through Shri Amrit Raj Mehta and Shri Tek Chand Mehta, Advocates.

Other respondents, absent.

Petition under Section 81 of the Representation of the People Act, 1951 calling in question the election of the Respondent No. 1 from the Jodhpur Constituency to the House of the People, in the Bye-election held on 24th April, 1952.

### JUDGMENT

This petition relates to the bye-election held on 24th April, 1952, for a seat in the House of the People, from the Jodhpur Constituency, in which the respondent No. 1 was declared as successful candidate. Besides the respondent No. 1, respondents Nos. 2 to 11 and one Shri Kishore Mall, had also filed their nomination papers, but the last named candidate has not been joined as a respondent for whose joinder an application addressed to the Election Commission, is pending consideration before us.

The objections of the petitioner are that he is a voter at No. 1545 in the Jodhpur constituency and that the nomination paper filed by the respondent No. 11 Shri Hakim Nisar Ahmad, has been improperly rejected by the Returning Officer, who held (1) that the respondent No. 11 was not a citizen of India and consequently not qualified to be chosen to fill the vacant seat, and (2) that he was not entitled to be registered in the Electoral Roll, as it had not been proved that he ordinarily resided in Jodhpur for 180 days during the qualifying period as prescribed under the Representation of the People Act, 1950.

The main grounds in the petition which challenge election of respondent No. 1 to the House of the People from the Jodhpur Constituency are (1) that the Returning Officer was wrong in holding that the respondent No. 11 was not a citizen of India, (2) that he was wrong in relying upon the judgment of the Rajasthan High Court that the respondent No. 11 was not a citizen of India in as much as it was a judgment in a *Habeas Corpus* petition, the scope of which was very narrow and which could not be deemed to have decided the right of citizenship of the respondent No. 11, (3) that the respondent No. 11 did reside in Jodhpur for 180 days during the qualifying period, (4) that the Revising Authority Shri K. S. Ujwal, had already decided that the name of the respondent No. 11 be put in the electoral roll which was actually done and it existed in the electoral roll on the date of the nomination, (5) that Shri M. J. Mardia, the successor of Shri K. S. Ujwal had no jurisdiction to review the order passed by Shri K. S. Ujwal, (6) that the respondent No. 11 had not been given any opportunity by the Returning Officer, to put forth his case, before he rejected the nomination paper and (7) that the rejection of the nomination paper of the respondent No. 11 has materially affected the result of the election from the constituency in question.

Out of the respondents, only the respondent No. 1, who is the successful candidate, has appeared and contested the petition. In his reply, he has stated (1) that the petitioner is not a voter in the constituency in question, (2) that the Returning Officer did not commit any error in rejecting the nomination paper of respondent No. 11 on the ground that he was not a citizen of India, which was based on the judgment of the Rajasthan High Court, which according to this respondent is final and binding on this point and (3) that the respondent No. 11 did not reside in Jodhpur for 180 days during the qualifying period. He has further denied that Shri K. S. Ujwal had decided that the respondent No. 11 be enrolled as a voter, but even if he had his successor had every power to revise that order, and have the name of the respondent No. 11 struck off; and in any case since his name was not on the rolls, he was not qualified to stand as a candidate. In addition to these pleas, the respondent No. 1 has pleaded that the petitioner has not joined two more duly nominated candidates whose non-joinder is fatal.

On these pleadings, the following issues were framed :—

*Issue No. 1.*—(i) Was the nomination paper of respondent No. 11, Shri Hakim Nisar Ahmad, improperly rejected, as alleged ?

(ii) If so, has it materially affected the result of the election ?

*Issue No. 2.*—Is the petitioner entitled to file this petition ?

*Issue No. 3.*—Is the petition bad and defective on account of Shri Kanaiyalal and Kishormal being not joined as respondents and is the petition liable to be dismissed on this account ?

*Issue No. 4.*—To what relief, if any, is the petitioner entitled ?

### FINDINGS

*Issue No. 1.*—First Part . . . . . In the negative.  
Second Part . . . . . Does not arise.

*Issue No. 2.*—In the negative.

*Issue No. 3.*—In the negative.

*Issue No. 4.*—Petition dismissed with costs.

## REASONS

*Issue No. 1.*—This issue which is the most important issue in this case, consists of two points *viz.* (1) whether the respondent No. 11 whose nomination paper was rejected by the Returning Officer was a citizen of India as defined by the Indian Constitution, on the date he filed his nomination paper, and (2) whether he possessed the qualification of having resided in Jodhpur for 180 days during the qualifying period as prescribed under sections 19 and 31 of the Representation of the People Act, 1950, so as to be entitled to be enrolled as an elector. So far as the first point is concerned, the petitioner's contention is that the respondent No. 11 was a citizen of India at the time of his nomination and that he never relinquished his citizenship. The petitioner, further says that on 10th July, 1948, when there was no permit system, the respondent No. 11 visited Pakistan on some business, and when he was about to come back to India, permit system was introduced, and as such he had to obtain a temporary permit for returning to India after which he never visited Pakistan. After his arrival in India, as the local Police objected to his staying in India on the basis of a temporary permit, he approached the Deputy Commissioner, Jodhpur, to write to the High Commissioner for India in Pakistan for a permanent permit. On 1st March, 1949, the Deputy Commissioner wrote to the High Commissioner for India in Pakistan that the respondent No. 11 was an Indian National and not an evacuee from India and that the temporary permit may, therefore, be cancelled. In the meanwhile the police put him under arrest and he therefore filed a *Habeas Corpus* petition which was dismissed by the Rajasthan High Court. Against this judgment, he filed an appeal in the Supreme Court which granted the stay of the High Court's order. It is further alleged in the petition that the respondent No. 11 also moved the Government of India to write to the High Commissioner for India to Pakistan to grant him permission to resettle permanently in India. The respondent No. 11 in his reply does not admit these allegations contained in the petition, but relies upon the judgment of the Rajasthan High Court and the order passed by the Returning Officer referred to above, and further says that if any correspondence has been carried on by the respondent No. 11 with the Government of India for granting him a permanent permit for resettling in India, it has no bearing on the question whether he was a citizen of India on the date of his nomination. The question, therefore, for our consideration, is whether the respondent No. 11 was a citizen of India on the date of his nomination. The petitioner also contends that the nomination paper filed by the respondent No. 11, for the Rajasthan Legislative Assembly, from Nagaur constituency, was accepted by the same Returning Officer on the same date, as against which the respondent No. 11 has stated that the scrutiny of the nomination papers of the Legislative Assembly was taken up first and no objection was raised against it as no person interested knew the real facts.

In support of his contention that the respondent No. 11 was a citizen of India at the date of his nomination, the petitioner has examined only this respondent and produced two letters exbs. 5 & 6, one addressed by the Under Secretary to the Government of India to the Chief Secretary on 20th December, 1950 and the other from the High Commissioner for India in Pakistan to the Chief Secretary to the Government of Rajasthan, Jaipur dated 28th December, 1950 in connection with the conversion of temporary permit of the respondent No. 11, into one for permanent resettlement in India. It is only according to this letter dated 28th December, 1950 marked exb. 6 and issued by the High Commissioner for India in Pakistan that the respondent No. 11 has been permitted to resettle in India permanently and before that, his stay in India, after he came from Pakistan in the end of July, 1948, was only as a foreigner, which on the expiry of the period of the temporary permit, became unauthorised.

It is an admitted fact that after his return from Pakistan when the period of temporary permit which was extended from time to time expired on 19th May, 1950 and he stayed away here, the Police of Jodhpur warned him to leave India on point of prosecution under the Influx from West Pakistan (Control) Act, 1949, and that he was actually arrested at Delhi on 24th May, 1950 by the Jodhpur Police for being deported to Pakistan. Thereupon the respondent No. 11 moved the High Court of Rajasthan by Miscellaneous Petition No. 6 of 1950 for a writ to be issued to the Government of Rajasthan, restraining them from compelling him to leave India, as he was a citizen of India and as such had a right to reside here. In these proceedings for writ started by the respondent No. 11, the Collector of Jodhpur filed a reply on behalf of the Government and subsequently an objection being raised, the Union of India was also joined as a party. The Government filed a reply to the respondent No. 11's petition for writ in which they traced the whole history of the political career of this respondent as a President of the Muslim League, Jodhpur and also otherwise, and asserted that he was not a citizen of India. On these facts, the High Court, Rajasthan, in order to decide this respondent's petition for Writ, framed the following two points for determination :—

- (1) Whether the petitioner was a citizen of India at commencement of Constitution ?
- (2) If so, was there any inroad on his right as a citizen to reside and settle in any part of the territory of India ?

After a very thorough and careful consideration of all the materials placed by the respondent No. 11 and the Government for the determination of the question whether the respondent No. 11 was a citizen of India, the High Court of Rajasthan in a very lucid and exhaustive judgment a certified

copy of which has been filed by the respondent No. 1 in this case, and marked as Exb. A-5 came to the conclusion "the petitioner did not have his domicile in the territory of India at the commencement of the constitution and was, therefore, not a citizen of India as defined in Article 5 of the Constitution". We have very carefully gone through this judgment and find that the materials which have been placed before us by the petitioner in support of his contention that the respondent No. 11 was a citizen of India, are so few as compared to those which were before the High Court, that we are not inclined to take a view different from the one taken by the High Court of Rajasthan in their judgment referred to above. It may be mentioned that our attention was drawn to the fact that the respondent No. 11 had filed an appeal against this judgment of the High Court, in the Supreme Court, which became infructuous on account of the Government of India having granted permanent permit to the respondent No. 11, for resettling in India. In our opinion this fact will have no bearing on the finding of the High Court on the question whether the respondent No. 11 was a citizen of India or not which stands fully adjudicated.

Besides the proceedings before the High Court of Rajasthan in which the question of the respondent No. 11 being a citizen of India or not, had been adjudicated upon, there were other proceedings started by Shri M. J. Mardia as Revising Authority, Jodhpur under the provisions of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, on the objection filed by one Ismail Khan against the inclusion of the name of the respondent No. 11 in the Electoral Roll, on various grounds. Out of which two grounds *viz.* (i) that the respondent No. 11 was not a citizen of India during the qualifying period as held by the High Court of Rajasthan, and (ii) that he had not resided in Jodhpur for 180 days during the qualifying period. The Revising Authority after framing similar issues, in a very elaborate order of 17-9-1951 which is marked as Exb. A-6, came to the conclusion that (i) the respondent No. 11 Hakim Nissar Ahmad was disqualified for registration in the electoral roll as he was not a citizen of India, as required by section 16(1)(a) of the Representation of the People Act, 1950. He, therefore, ordered that the name of Hakim Nissar Ahmad be excluded from the electoral roll which should be amended accordingly. Against this, the respondent No. 11 made an application to the Election Commission which did not interfere with the decision of the Revising Authority. The order of the Election Commission, which is dated 30th June, 1952 is marked as Exb. A-7. In view of this order of the Revising Authority, it is not understood as to how the petitioner can contend that the name of the respondent No. 11 appeared in the electoral roll. The respondent No. 11 has filed certified copies of the original entry in the electoral roll and amending entry marked as Exb. A-8 and A-9, which very clearly show that the name of the respondent No. 11 was removed from the electoral roll as ordered by the Revising Authority.

The next question for consideration under this issue is whether the respondent No. 11 possessed the necessary qualification of having resided for a period of 180 days during the qualifying period as prescribed by sections 19 and 21 of the Representation of the People Act, 1950. After having gone through the order passed by the Revising Authority on 17-9-1951, against the inclusion of the respondent No. 11's name in the electoral roll, which he was quite competent to pass, we are of the opinion that this point is concluded by this order and we are not inclined to take a different view.

Accordingly our conclusion on the two points mentioned above is that the respondent No. 11 Hakim Nissar Ahmad was not a citizen of India, as defined by Articles 5 and 6 of the Constitution of India, and also that he was not entitled to be registered as an elector in the electoral roll as it has not been proved that he had been a resident for 180 days during the qualifying period. Since it has been held by the High Court of Rajasthan in its judgment Ex. A-5, that the respondent No. 11 Hakim Nissar Ahmed had migrated to Pakistan after 19th July, 1948, he could not become a citizen of India, unless he got himself registered as required by Article 6(b) (ii) of the Constitution. The question of registration as an elector in the electoral roll arises only when a person possesses the qualification of being a citizen of India as required by section 16(a) of the Representation of the People Act, 1950.

Therefore in view of the above conclusions, our finding on this issue is that the nomination paper of the respondent No. 11 Hakim Nissar Ahmed had not been improperly rejected and answer this issue accordingly.

Part (ii).—In view of the finding on first part of this issue, no finding on this part is necessary.

Issue No. 2.—This issue arises out of the allegation made by the respondent No. 1 in his written statement that the petitioner is not a voter. No entry from the electoral roll has been produced before us to show that the petitioner's name is entered in the electoral roll of the Jodhpur constituency. In the absence of any such entry being on the record, we are of the opinion that the petitioner has failed to prove that he is a voter in the constituency in question and answer this issue accordingly.

Issue No. 3.—It has been alleged by the respondent No. 1 that the petitioner has not joined two duly nominated candidates *viz.*; Shri Kamhyalal and Shri Kishori Mal as respondents, and their non-joinder is fatal. It is an admitted fact that these two persons were also duly nominated candidates as the petitioner himself has made an application to the Election Commission for Kishori Mal's joinder which has been sent to us for disposal.

This question of non-joinder of duly nominated candidates has been the subject matter of great controversy before us in some of the petitions and also various other Tribunals, and the opinion of a good majority of the Tribunals including this Tribunal, is that no doubt the joinder of such persons is necessary, but their non-joinder is not fatal to the petition. We have absolutely no reason to take a different view from the one that we have already taken. We are also of the opinion that the presence of these persons is not at all necessary for the determination of the question in controversy between the petitioner and the respondent No. II on one hand and the respondent No. I on the other, who alone are interested in the adjudication. We also do not think it necessary to join them at this stage as no useful purpose will be served by their joinder. Our finding on this issue, therefore, is that their joinder is not necessary and answer this issue accordingly. This also disposes of the petitioner's application addressed to the Election Commission for the joinder of Kishori Mal as respondent, which has been sent to us for disposal.

*Issue No. 4.*—As a result of our findings on issues Nos. 1 and 2, we are of the opinion that the petition be dismissed with costs. The petitioner shall bear his costs and also those of the respondent No. I. We fix Rs. 250/- as Advocate's fee.

#### ORDER

The petition is dismissed. The petitioner is ordered to pay respondent No. I his costs of the petition including Rs. 250/- as Advocate's fee.

(Sd.) M. P. ASTHANA, *Chairman.*

(Sd.) M. C. BHANDARI, *Member.*

(Sd.) GOVERDHANDAS T. GAJRIA, *Member.*

Judgment announced, signed, sealed and dated in open Court on 6th May, 1953.

(Sd.) M. P. ASTHANA, *Chairman.*

(Sd.) GOVERDHANDAS T. GAJRIA, *Member.*

(Sd.) M. C. BHANDARI, *Member.*

[No. 19/332/52-Elec. III/6997.]

#### ELECTION TRIBUNAL RAJASTHAN, BIKANER AT BIKANER

##### MEMO OF COSTS

In Election Petition No. 332 of 1952 Shri Banraj son of Naraiandas of Jodhpur, Ward No. 10, Jalap Mohalla—*Petitioner.*

##### *Versus*

Shri Jaswant Raj son of Ganeshraj Oswal Mehta, Ladnoo House, Ward No. 3, Jodhpur and 10 others—*Respondents.*

Election Petition u/s 81 of R. P. Act, 1951 questioning Elections dated 29-4-52 to the House of the People from Jodhpur Constituency.

Petitioner's expenses		Respondent No. I's expenses	
	Rs. A. P.		Rs. A. P.
Stamp on Petition . . . . .	Nil	Stamp on Vakalatnama. . . . .	1 8 0
Stamp on Vakalatnama . . . . .	0 8 0	Pleader's Fee . . . . .	250 0 0
Pleader's Fee . . . . .	Certificate not produced.		
Process fee . . . . .	6 4 0	Process fee . . . . .	2 8 0
Miscellaneous . . . . .	86 5 0	Miscellaneous . . . . .	8 0 0
<b>TOTAL</b> . . . . .	<b>93 1 0</b>	<b>TOTAL</b> . . . . .	<b>262 0 0</b>

NOTE.—The Election Petition being dismissed on 6-5-53, the Petitioner was directed to pay Rs. 262/- as costs to Respondent No. I including Rs. 250/- as Advocate's fee.

(Sd.) M. P. ASTHANA, *Chairman,*  
Election Tribunal Rajasthan Bikaner.

**S. R. O.927.**—WHEREAS the election of Shri Shividarshanlal son of Shri Hajarilal Agarwal, Mandsaur, as a member of the Legislative Assembly of the State of Madhya Bharat from the Mandsaur North constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Chandmal son of Shri Kasturchand Jee Maroo, Mandsaur;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission ;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT INDORE (MADHYA BHARAT)  
ELECTION PETITION NO. 334/52

Shri Amar Nath Segal, B.Sc., (Hons.), LL.B.—*Chairman.*

Shri R. N. Shingal, B.A., LL.B.—*Member.*

Shri M. B. Rege, B.A., LL.B.—*Member.*

Chandmal S/o Kasturchand Jee Maroo, Mandsaur.—*Petitioner.*

*Versus*

1. Shividarshanlal s/o Hajarilal Agarwal, Mandsaur.
2. Takhatmal s/o Loonkaranje, Bhilas.
3. Laxmansingh s/o not known Khadiwala Dhar.
4. Anand Bihari Mishra, Morena.
5. Shambhajeet Rao s/o Chandrojee Rao Angre, Gwalior.
6. Daulat Singh s/o Not known Thakur Sukheda.
7. Mohansingh s/o Not known Chandarpura—*Respondents.*

Mr. B. R. Nahta—*Counsel for the Petitioner.*

M/S G. S. Gandhe, V. V. Kotwal, D. G. Bhalerao and U. M. Trivedi [Counsel for Respondent No. 1.]

ORDER

This is a petition by Shri Chandmal s/o Kasturchand Maroo, elector No. 2486, Ward No. 2 of the Mandsaur North Constituency, challenging the election of Shri Shividarshanlal s/o Hajarilal Agarwal, on the ground of the illegal rejection of the nomination paper of Shri Laxman Singh Khadiwala of Dhar (respondent No. 3), and of corrupt and illegal practices by respondent No. 1 Shividarshanlal during election. The petition is resisted by the sitting member Shri Shividarshanlal alone. In his reply the allegations made against him in the petition, have been denied *in toto*, and it is further contended, that the petition offends against the provision of Section 83 clause 2 of the Representation of People Act, by reason of the want of verification of the lists of corrupt and illegal practices. It is further contended, that the subsequent amendment removing his lacuna, cannot cure the defect.

On the pleadings, the following issues were framed as preliminary issues.

(1) Was the nomination paper of respondent No. 3 Laxman Singh improperly rejected, and the result of the election was materially affected by the rejection?

(2)(a) Was the election petition, as presented, objectionable under section 83-2 of the Representation of the People Act, for lack of verification of the lists of particulars?

(2)(b) If so, would the position be altered in any way by the subsequent amendment, submitted to the Election Commission India?

Shri U. N. Trivedi, counsel for respondent No. 1, asked for an additional issue on the contention in paragraph 18 of the return, namely, that the joinder of respondents 3, 4, 5 and 7, whose nomination papers had been rejected, was illegal and fatal to the petition. Accordingly two, new issues were framed on 14-3-1953 namely :

(3)(a) Are respondents No. 3, 4, 5 and 7 not necessary parties?

(3)(b) If so, is the petition liable to be dismissed on account of their being joined as respondents?

Elaborate arguments were addressed to us on the question of joinder of parties, which is the subject of issue No. 3 and it was contended that the petition deserved to be dismissed as being against the provisions of Section 82 of the Representation of the People Act. There is, however, no force in the contention that the joinder of persons who according to the respondent No. 1, were not necessary parties, is fatal to the petition. The Civil Procedure Code provides for mis-joinder and non-joinder of parties and rule 10 of order 1, gives power to this Tribunal to strike off parties that are not necessary or proper, for the purposes of the petition. It also provides, that mis-joinder and non-joinder are not necessarily fatal to the proceedings. In the case in hand, therefore, the inclusion of respondents whose nomination papers were rejected, could at worst be said to be a surplusage and the defect even, if it existed, could be cured by the names of un-necessary parties being struck off. But in our view all the Respondents to this petition are necessary parties. Section 82 of the Representation of the People Act 1951 provides, that the petitioner shall join as respondent to his petition, all the candidates who were duly nominated at the election other than himself, if he was so nominated. On an interpretation of this section, we have in our decision of Election Petition No. 284 of 1952, pointed out the distinction between a duly nominated candidate and a validly nominated candidate, and we see no reason to depart from that view.

Shri U. M. Trivedi referred in support of his contention to Section 90 read with Section 119 of the Representation of the People Act. These sections do not, we think, support his contention. Read with section 82 of the Act, the clear position seems to be that a petitioner seeking to challenge an election must join as respondents all candidates who were duly nominated other than himself, if he was so nominated, in his petition, then comes the stage where, after the publication of the petition in the official Gazette, any other candidate gets an opportunity of asking for being joined as a respondent [section 90(1)] provided he gives security for costs as provided in section 119. In the case before us there is no question of a party required or entitled to be joined being left out, and the contention is that persons who are not necessary parties have been wrongly impleaded.

The findings on issue 3(a) and (b) therefore are :—

3(a) The Respondents 3, 4, 5 and 7 are necessary parties.

3(b) No.

This leads us to the second issue, which deals with want of proper verification of the list of particulars. It appears from the record, that the petition as presented initially to the Election Commission on 16th September 1952, was accompanied by lists of particulars (appendices A to N.) which were not verified in accordance with law. On the 21st of October 1952 the petitioner was intimated of the defect, and was told that the intimation is to be read, as without prejudice to the provisions of law applicable to the case. The petitioner on 1-11-1952 submitted verifications only, (without the lists) in the following terms, "I the above named petitioner, solemnly affirm on oath, that the contents of appendices A to N are correct to the best of my knowledge and belief", and received a telegraphic intimation on the 6th item, that the verifications received were not in accordance with law, and also an intimation by letter, that if he the petitioner desired to further explain the position in person, he should appear before the Commission for that purpose, on or before the 17th November 1952. The petitioner then submitted verified lists, which have been forwarded to this Tribunal by the Commission with the petition.

It is conceded on behalf of the respondent, that the verifications sent with the petition are in order, but it is contended that the initial defect could not at this stage be cured, and, therefore the petition ought to be dismissed under section 90 clause 4 of the Representation of the People Act, as being one which does not comply with the provisions of section 83. In our view it was open to the Election Commission to dismiss the petition under section 85 of the Representation of the People Act; and the fact that this power was not exercised by the Commission and even the duly verified lists submitted by the petitioner later; have been forwarded to us indicates condonation by the Commission of the defect. But apart from this we have held in the case of *Shantilal Choudhary V. Raghuraj Singh* Election Petition No. 188/1952 that an opportunity for curing the defect in verification could be given, under the provisions of the Civil Procedure Code. We, therefore, hold that the defect is not fatal and it is open to us to take the case up, as sent by the Commission along with the correct verifications.

**Issue No. 1.**—It is common ground that respondent No. 3 Laxman Singh, duly presented his nomination paper on the 21st of May 1952. Laxman Singh was entitled to be nominated, but, his name appeared not in the constituency from which he stood for election, but from a constituency in Dhar. Section 33(6) of the Representation of the People Act, provides that if at the time of the presentation of a nomination paper, the returning officer finds that the name of the candidate is not registered in the roll of the constituency for which he is the returning officer, he shall for the purpose of sub section 5, require the person presenting the nomination paper to produce either a copy of the electoral roll, in which the name of the candidate is included, or a certified copy of the relevant entries in such roll. It appears from the record that with his nomination paper, Shri Laxman Singh submitted what purported to be an extract from the Electoral Roll of the Dhar constituency ward No. 9, signed by the Tehsildar, but bearing no seal. Perhaps the candidate himself thought, that the want of a seal on the copy may vitiate it for the purpose of

section 33, clause 6 ; and accordingly on the 22nd of May 1952 he presented, what the Returning Officer considered to be, a duly certified extract. After the close of the arguments, and before the date fixed for the decision of the case, an application was made on behalf of the respondent Shri Shiv Darshanlal, together with an affidavit sworn by one Lashmi Narayan Keshao Ram, in which the allegations made in the affidavit of the petitioner on 18-4-1952 were traversed. It was, however, brought to our notice, that the affidavit gives an incorrect date, as para. 3 thereof mentions the date of presentation of the nomination paper, as 21-10-52. It is admitted on behalf of Shri Shiv Darshanlal that this is an error, but it is said that there is only a typing error. But assuming that the affidavit is taken as referring to the due date for presentation of the nomination paper viz. 21-5-52, and the allegation that the Returning Officer demanded a copy of the relevant roll or an extract therefrom to be correct, it is clear that a copy had been presented with the nomination paper. It is nobody's case that the copy was considered defective and in any case a copy which the Returning Officer considered to be a properly certified copy was presented before the date of the scrutiny. Section 33 of the Representation of People Act 1951 does not make it incumbent on a candidate to deliver with his nomination paper a copy of the Electoral Roll or a certified extract therefrom and the finding of the Returning Officer that the nomination paper was not duly presented, based as it is on an assumption that such a copy or extract must accompany the nomination paper cannot be supported.

An argument is advanced, that neither of the copies filed meets the requirements of law, for a certified copy, because the seal on the copy submitted later on, is that of the Tehsildar, and not of the Election Officer. And the first copy does not bear any official seal at all. "Certified Copy" of a public document means (Section 76 of the Indian Evidence Act), a copy given on payment of legal fees, therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be ; and such certificate should be dated and subscribed by such officer with his name and official title, and be sealed whenever such officer is authorised by law to make use of a seal. The officer empowered to issue, the said copies, is the one who has the custody of the public document in question. Now in Rule 24 of the Representation of the People (Preparation of Electoral Rolls) Rules 1950, it is open to the Government to provide for the custody of the document. In the case in hand the Tehsildar has certified the copy and put his official seal and on the *maxim omnia praesumuntur rite et solenniter esse acto* a presumption arises in favour of the due performance of all things essential for the act. Mr. Bhalerao was given some time at his request to substantiate the contention raised by him, that the Tehsildar had no such authority. But he was unable to do so. The result is that we have on the record 2 copies, at least one of which, presented prior to the scrutiny fulfils the requirements of law. It is clear in our view, that it was not necessary for the petitioner to submit any copy of the electoral roll with the petition ; and on the other hand, it was the duty of the officer himself, to demand a copy of the Electoral Roll in which the name of the candidate appeared, or a certified copy thereof. There could have been no demand prior to the presentation of the nomination paper and the omission of the petitioner to tender a certified copy of the roll along with his nomination paper would not affect the presentation of the nomination paper and in law the nomination paper could not have been rejected. In any case since admittedly the name of the candidate finds the place in the electoral roll of Dhar ward No. 9, the defect is technical and not of a substantial character, and therefore, by reason of the provision of section 36 clause 4 the Returning Officer could not reject the nomination paper. We are, therefore, constrained to hold that the rejection of the nomination paper was illegal, and improper, and the election is thereby vitiated. In the case of *Bindraban Prasad V. Sitaram*, Election Petition No. 92 of 1952, we have given reasons fortified by authorities for the view that the improper rejection of a nomination paper renders the whole Election void and that it connotes prejudice. We, therefore, accept the Petition, and declare the Election of Shri Shiv Darshanlal void. The claim made on behalf of respondent No. 2 was not pressed. The petitioner shall be entitled to his costs including Pleader's fees Rs. 100.

(Sd.) AMAR NATH. *Chairman,*  
Election Tribunal, Indore.

(Sd.) M. B. REGE, *Member.*

(Sd.) R. N. SHINGAL, *Member.*

*The 28th April, 1953.*

[No. 19/334/52-Elec. III/6718.]

By Order,  
P. R. KRISHNAMURTHY, Asstt. Secy.

